

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

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Date:  
March 30, 2009

Date 1 =  
Grantor =  
Trust 1 =  
Foundation =  
Spouse =  
W =  
Date 2 =  
Trust 2 =  
Year 3 =  
X =  
Accountant =  
Year 4 =  
Y =  
Year 5 =  
Z =  
Year 6 =  
Trust 3 =  
Trust 4 =

Dear :

This is in response to your submission dated September 25, 2008, and subsequent correspondence requesting an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to allocate generation-skipping transfer (GST) tax exemption.

We understand the facts to be as follows. On Date 1, Grantor created Trust 1 for the benefit of a class of discretionary beneficiaries, specifically Grantor's two children, their lineal descendants and Foundation. Grantor and Spouse funded Trust 1 with a cash contribution of \$W. On their respective Forms 709, United States Gift (and Generation-skipping) Transfer Tax returns Grantor and Spouse elected to treat the gift as made

one-half by each under § 2513. Each allocated sufficient GST exemption to the transfer, such that the inclusion ratio of Trust 1 was zero immediately after the transfer.

On Date 2, Grantor created Trust 2. It is represented that the beneficiaries and dispositive provisions of Trust 2 are identical to those of Trust 1. Under Article IX of each trust, if the trustee is authorized to make a distribution of principal or income, the distribution may be made to another trust whether or not created under the terms of the instrument, provided that all of the beneficiaries of the trust receiving the distribution are persons who would have been eligible to receive the distribution had it been made outright under the trust indenture. Pursuant to this authority, Trust 2 was funded with a portion of the assets previously held by Trust 1.

In Year 3, Grantor transferred an insurance policy to Trust 2. It is represented that the net fair market value of the transfer was \$X. Grantor reported the transfer on a Form 709 filed for Year 3 that was prepared by Accountant. The return neither reflected the prior use of Grantor's GST exemption nor allocated any GST exemption to the transfer to Trust 2.

In Year 4 and Year 5 Grantor made additional transfers to Trust 1. It is represented that the net fair market value of each of the transfers was \$Y and \$Z, respectively. Grantor allocated sufficient GST exemption to each transfer, such that the inclusion ratio of Trust 1 was zero immediately after each transfer.

In Year 6, the trustee of Trust 1, pursuant to the authority of Article IX, distributed all of the assets of Trust 1 to Trust 3. Under the terms of the Trust 3, the trust assets were divided into two separate shares, one for the benefit of Grantor's son, his lineal descendants and Foundation, and the other for the benefit of Grantor's daughter, her lineal descendants and Foundation. It is represented that, other than the creation of the separate shares, the beneficiaries and dispositive provisions of Trust 3 are identical to those of Trust 1.

Also in Year 6, the trustee of Trust 2, pursuant to the authority of Article IX, distributed all of the assets of Trust 2 to Trust 4. Under the terms of Trust 4, the trust assets were divided into two separate shares, one for the benefit of Grantor's son, his lineal descendants and Foundation, and the other for the benefit of Grantor's daughter, her lineal descendants and Foundation. It is represented that, other than the creation of the separate shares, the beneficiaries and dispositive provisions of Trust 4 are identical to those of Trust 2.

It is represented that all relevant parties are alive at this time; that with the exception of the above described transfers, no additional property has been transferred to Trusts 1, 2, 3 or 4; that there have been no generation-skipping transfers from any of the trusts; and that there has been no subsequent use of Grantor's GST exemption.

Grantor requests the following rulings: 1) that Grantor be allowed an extension of time in which to make an allocation of GST exemption to the Year 3 transfer to Trust 2; and 2) that the inclusion ratio of Trusts 3 and 4 will be zero.

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer is defined under § 2611(a) as: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines the applicable rate as the product of the maximum estate tax rate and the inclusion ratio with respect to the transfer.

Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is generally defined as the excess of 1 over the applicable fraction. The applicable fraction, as defined in § 2642(a)(2), is a fraction, the numerator of which is the amount of GST exemption under § 2631 allocated to the trust (or to property transferred in a direct skip), and the denominator of which is the value of the property transferred to the trust or involved in the direct skip.

Section 2631(a), as effective in the year at issue, provided that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(b)(2) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Section 2642(b)(1) provides, in relevant part, that if the allocation of the GST exemption to any transfers of property is made on a timely filed gift tax return or is deemed to be made under § 2632(b)(1) or (c)(1), the value of such property for purposes of determining the inclusion ratio shall be its value as finally determined for gift tax purposes and such allocation shall be effective on and after the date of such transfer.

Section 2642(g)(1)(A) provides, generally, that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in ' 2642(b)(1) or (2), and an election under ' 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that, under ' 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a generation-skipping transfer trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in ' 2642(b)(1) or (b)(2) or an election described in ' 2632(b)(3) or (c)(5) under the provisions of ' 301.9100-3.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute). In accordance with ' 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in ' 2642(b)(1) or (b)(2) or an election described in ' 2632(b)(3) or (c)(5) under the provisions of ' 301.9100-3.

Section 301.9100-3(a) provides, in part, that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1) provides, in part, except as provided in § 301.9100-3(b)(3)(i) through (iii), that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(c)(1) provides, in part, that the Commissioner will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be prejudiced by the granting of relief.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, an extension of time of 60 days from the date of this letter is granted in which to allocate Grantor's GST exemption to the Year 3 transfer to Trust 2. The allocation will be effective as of the date of the transfer to Trust 2. The allocation should be made on a supplemental Form 709 for Year 3, and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental Form 709. A copy

is enclosed for this purpose. We further conclude that in light of the relief granted above, if sufficient GST exemption is allocated with respect to the Year 3 transfer to Trust 2 and sufficient GST exemption was allocated with respect to the Years 1, 4 and 5 transfers to Trust 1, then the inclusion ratio of both Trusts 1 and 2 will be zero immediately after the transfers. No property was transferred to Trusts 1 and 2 thereafter. Pursuant to the terms of Trusts 1 and 2, the trustees have now transferred the trust property to trusts with substantially identical terms, Trusts 3 and 4. No property was transferred to Trusts 3 and 4 thereafter. Accordingly, Trust 3 and Trust 4 will have an inclusion ratio of zero.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

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CURT G. WILSON  
Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures

Copy for § 6110 purposes (1)  
Copy of this letter (1)

cc: